SPEECH

OF

MR. P. P. BARBOUR,

OF VIRGINIA,

DELIVERED IN THE HOUSE OF REPRESENTATIVES OF THE UNITED STATES, FEBRUARY 10, 1820,

On the following amendment proposed by Mr. Taylor, of N. Y. to the Bill authorising the people of Missouri to form a Constitution:

Section four, line twenty-five, after the word "States," insert the following: "And shall ordain and establish, that there shall be neither slavery nor involuntary servitude in the said state, otherwise than in the punishment of crimes whereof the party shall have been duly convicted: *Provided always*, That any person escaping into the same, from whom labor or service is lawfully claimed in any other state, such fugitive may be lawfully reclaimed, and conveyed to the person claiming his or her labor or service, as aforesaid: *And, provided, also*, That the said provision shall not be construed to alter the condition or civil rights of any person now held to service or labor in the said territory."

Mr. CHAIRMAN: In rising to address you at this time, I feel that I labor under great disadvantages; I am about to embark in the discussion of a subject, which has already been greatly exhausted; I am about to do this too, at a period of the day, when talents of a higher order than I can pretend to, would scarcely command attention; these circumstances are, of themselves, sufficiently discouraging; but the greatest difficulty of my situation, consists in the frame of mind, in which I fear the committee have been left, by the closing remarks of the member from Pennsylvania, (Mr. Sergeant) who has just resumed his seat: he made such persuasive appeals to their feelings; he painted in such glowing colors of pathetic eloquence, the horrors of slavery in general, and particularly the agonizing scenes of husbands separated from wives, & parents torn from children; that I fear the agitations of an excited sensibility, will be unfriendly

to the dispassionate investigation and correct decision of this great question.

If, sir, the cause which I have risen to defend, required talents, like those which I have just described; talents which, by exciting the sympathies of the heart, cause the hearers to forget the allegiance due to the judgment, then, indeed, I should abandon the unequal, the hopeless contest, in which I should find myself engaged: but the duty which devolves on me, is of a different kind—it is to endeavor, as far as I can, to allay the tumult of feeling, which has just been excited, and then, in the language of plain truth, to attempt to convince your minds, of the error, of the gentleman's reasoning.

Let me, then, tell the gentleman, that the picture which he has drawn of the suffering, incident to domestic slavery in the south, is too strong; that he has shaded it too deeply, with the coloring of his own imagination; that, though we do keep the yoke of servitude, upon the necks of our fellow men, yet our humanity has lightened its pressure; that, though slavery, disguise it as you will, is still a bitter draught, yet, the same humanity has lessened the bitterness of this draught, by the infusion into it, of many drops of consolation; that, in fine, such has been the continually increasing melioration, in the condition of that people amongst us, that they now, in general, experience the utmost degree of indulgence, which is compatible with the relation, of master and slave.

But, sir, I find that I am digressing from the subject, which I rose to discuss. Are we now called to decide, as an abstract question, whether slavery is, or is not justifiable? No, sir, that question had been long settled, before the formation of our constitution; slavery existed in many of the states at that period; its existence and its continuance were recognized by that instrument; the states surrendered to the federal government, no power over the subject, except after a given period, to prohibit the importation of slaves from abroad. I tell, gentlemen, then, that this is neither the time nor the occasion, for the discussion of the abstract justice, or injustice, of slavery; if we were called upon, in our respective state legislatures, to decide upon its continuance or abolition; or if we were now in convention, for the purpose of forming a new federal constitution; in either of these cases, their arguments of that kind, would have some application. But who are we, and what are our functions? We are the creatures of the constitution, not its creators; we are called here to execute, not to make one. Let gentlemen, then, remember, that it is not sufficient for them to shew that slavery cannot be justified in itself; that it is,

if you please, a moral and political evil; they will yet fail to maintain their ground, unless they can also shew that the constitution gives us power over it. An example or two, will furnish a better illustration of my idea, than general reasoning. Luxury is considered a great political evil in any state, but particularly in a government like ours, whose stability depends, upon the virtue of the people. Let us suppose that this political malady, prevailed in an extreme degree in any one, or all of the states of this Union. Is there a member of this committee, who will undertake to say, that we could attempt to cure the evil, by the passage of sumptuary laws? Again, sir, consider all those violations of morality and religion, which are the subjects of the criminal jurisprudence of the several states; they are all moral and political evils; and yet no member of this committee will venture to affirm, that we can attempt to arrest them by our legislation; and why, sir? For the obvious reason that, though they are evils, and of a kind too, which may vitally affect the stability and prosperity of the whole body politic, yet they are the subjects of state legislation, over which no power has been transferred to us by the constitution. Sir, as well might the British Parliament attempt to exercise its authority, in the correction of what it thought to be moral or political evil, in the several states; because, as it respects any subject, over which the constitution has not given us power, we are as alien a government, in relation to the states, as is the British government.

I have made these remarks, for the purpose of disembarrassing this question of extraneous difficulty; of shewing what the question is *not*, that we may better understand what *it is*. The question is not, then, whether slavery is in itself an evil, but whether, supposing it to be such, we have the power to correct it, in relation to Missouri? The committee will perceive, from my mode of stating the question, that I mean to discard from my consideration the enquiry into the humanity and expediency of the proposed restriction; I do this because ample justice has already been done by abler advocates than *myself*, to those views of the subject; and because, too, I can conceive no argument so strong, to prove the inexpediency of the measure, as will result from proving, as I hope I shall be able to do, that we have not the power to impose it. Let gentlemen reconcile it, if they can, with their ideas of humanity, to prevent an increase of slaves, by denying to them an increase of comforts; let them, if they can, reconcile it with their ideas of justice or expediency, to keep this vast country uncontaminated with slaves, for millions of freemen yet unborn, at the hazard

of the happiness and safety of millions now existing; if, upon these points, they differ with me in opinion, they will at least, agree in this proposition; that, under no circumstances, ought we to attempt to do that, which we have not power to do. That we have no power, to impose this restriction, I shall attempt to prove, by shewing, that it would be in direct violation of the constitution, and of the treaty of cession from France, of 1803. Before, however, I enter particularly into the reasoning in support of the view, which I have just mentioned, I beg leave to notice some remarks, of the member from Pennsylvania, in relation to the construction of the constitution. He told us, that there was an increasing liberality in this respect; and that, particularly, in relation to any measure of a beneficent character, he looked into that instrument, with a desire to find the necessary power: Yes, sir, there is indeed liberality, and in an increasing degree; and I must be permitted to say, that we are extremely apt to think that we find that, which we seek with a desire to find. The gentleman referred to some examples of this liberal spirit. I candidly own to you, sir, that I am filled with the most serious apprehensions, at the progress which we have already made, and which we seem disposed yet to make, in this respect; let us for a moment mark it: At one time a National Bank is proposed to be established; it is discovered that this will facilitate the collection of the public revenue; and hence, a power is derived to establish it, although a proposition was made in the convention, to give the power of granting charters of incorporation, which did not pass:* at another time a great system of internal improvement is proposed; it is recommended by its beneficence, in annihilating space, and bringing nigher together the extremities of the republic, by roads and canals; and from the power to declare war, is derived a power to establish military roads, although one of the schemes of government, proposed in convention, contained a proposition to establish *military*, as well as *post* roads, which prevailed only so far as relates to the latter.† Thus, sir, we have been continually advancing, step by step, in the enlargement of the rule of construction, and every previous decision, becomes a precedent in aid of that, which next follows. Whether we have yet arrived, at the point marked by the limits of the constitution, it seems to be impossible to say; for, as we advance, those limits, like our horizon, seem to recede; so that whatever step we have last taken, marks not the utmost verge of our power, but only the point to which construction,

*See Journal of Federal Convention, page 260.
† Ibid. p. 75.

up to that time, has carried us. By the aid of construction, then, we find ourselves in possession of very large powers, and defined by very unsettled boundaries, in relation to the *old* states; if, in addition to this, we assume the power now claimed by gentlemen in relation to *new* states, which I shall attempt to shew is entirely without boundary at all, then, indeed, I shall begin to think that parchment delineations of power are little else than form; that mankind have no ligaments strong enough to bind the hands of their fellow men when in power. If the doctrine now contended for be true, let us not, as in other days we were wont to do, enquire what powers *have* we, but what *have we not?*

These remarks, have been called forth by those, which were made by the member, who preceded me; I now beg leave to call your attention, to the very question before us, and, I will endeavor to subject it, to the severest scrutiny, of which I am capable. The bill before us proposes to authorize the people of Missouri, to form a constitution and state government; an amendment is offered to the bill, which requires of the proposed state, as a sine qua non, to its admission into the Union, that it should by a compact, irrevocable without the consent of Congress, make a provision, the effect of which would be, to prevent the further introduction of slaves into that state, and to emancipate the children of all those now there; and, the the question is, whether we have power to impose this condition, which the amendment proposes? The advocates of the amendment, contend that we have the power; on our part, it is contended, that we have not.

The question being thus precisely stated, I will remind gentlemen, at the threshold of the discussion, that they hold the affirmative; that, therefore, the burden of proof devolves on them; I do not mention this, from any apprehension of the weakness of my position; on the contrary, such is my confidence in its strength, that I feel I can with safety assume upon myself, the burden of proof, when it belongs to my opponents; but, I wish it to be distinctly understood, that I shall consider this, as a gratuity on my part, and not an act of duty.

Both the members from Pennsylvania (Mr. Hemphill, and Sergeant) have relied much, upon the ordinance of 1787, the 6th article of which, forbids slavery in the north western territory, as shewing the power of the old Congress, in relation to this subject; as this is anterior to the constitution, and as it may somewhat conduce to system, to observe a chronological order, I beg leave first to examine the character of that act, and what influence it

ought to have, upon this question. This celebrated act of the Old Congress, has been called an usurpation ; gentlemen have expressed their astonishment, at this epithet ; I am prepared, from the most unquestionable authority, to prove the charge, and for that purpose, I beg leave to read, from the 38th number of the Federalist, the following extract :—"Congress, (that is the Old Congress) have undertaken to do more—they have proceeded to form new states ; to erect temporary governments ; to appoint officers for them ; and to prescribe the conditions on which such states shall be admitted into the confederacy. *All this has been done, and done without the least color of constitutional authority.*" These, sir, are the words of a member, and, let me add, a distinguished member of the Federal Convention; one, who after he had contributed to the formation of the constitution, devoted eight years of his life, to its actual administration. If, then, the Old Congress, in the enactment of that ordinance, acted without the least color of constitutional authority, it is obvious, that the act must be utterly void, as an act of legislation ; has it force in any other way ? Gentlemen, conscious of this vital defect, have, in effect, conceded it, by resting its authority upon the footing of contract ; they say, that, after the cession by Virginia, and the enactment of that ordinance, it was submitted to Virginia for her ratification, and that it was ratified. It has already been shewn, by the Speaker, both from the resolution of Congress and the act of the Virginia legislature, that, it was an alteration in the number and dimensions of the states, to be carved out of that territory, which was alone submitted, and which, therefore, was alone intended to be decided ; but, there are other insuperable objections to this ordinance, considered upon the footing of a contract, having any influence, upon the present question.

It has been correctly said, that, to make a valid contract, there must be two parties. Now, tho' Virginia should be considered as having been competent, yet, the Old Congress was not ; I have shewn you that they had not the least color of constitutional authority over the subject ; it follows, then, that they were as little competent to contract, as to legislate in relation to it. But, again, sir ; Supposing the Old Congress to have been a competent contracting party, it is conceded on the other side, that, considering the ordinance in the light of a contract, the assent of Virginia, was indispensable to its validity. Now, sir, to make that at all analogous to the present case, it is necessary that France should give its assent, to the proposed restriction of sla-

very ; because France having been the power which ceded Louisiana, stands in the same relation to that country, as Virginia did to the north western territory. Surely then, there can be no weight due to this ordinance, as a precedent, when we reflect, that it emanated from men, having no jurisdiction over the subject matter to which it relates; and that, too, at a time anterior to the formation of our constitution, which is the only source of our power, and which, I shall attempt to prove, clearly gives us none such as is contended for.

One gentleman, from Pennsylvania,(Mr. Hemphill,) attempted to derive some aid to his argument, from the Journal of the Federal Convention ; he said, that, as the clause originally stood, it authorized Congress to admit new states, upon the same footing with the original states; and as these words are not found in the existing constitution, he thence infers that, it was intended to vest Congress, with a discretionary power as to conditions ; if the gentleman had examined the same clause, in its original shape, he would have found that it also contained this provision, " that Congress might make conditions with the new states, as to the existing public debt ;" Now, sir, the gentleman I am sure, would not be willing to extend the inference on which he relies, to this part of the clause ; because, if he did, the consequence would be that, the new states would not be liable for their proportion of the public debt ; the truth, is, that both sets of words were omitted for the same reason. That is, because they were both necessary consequences of the admission, and they were, therefore, supererogatory. Many other examples might be found by examining the Journal, from which it was evident that particular expressions included in the first project of the constitution, were omitted in the existing one, because they were necessarily embraced, in the remainder of the same clause, or were the unavoidable result, of the construction of the whole instrument. This argument, then, is utterly untenable.

I come now, sir, in the order of discussion, to the constitution itself; various provisions of that instrument have been relied upon, in support of the proposed measure ; and, here, sir, the first remark to be made is this :—That the friends of this restriction,not only trace this power up to different principles, but, to such as are utterly incompatible with each other ; and in relation to which, therefore, the assertion of one, is necessarily the refutation of the other ; some of the gentlemen say, that we are authorized to impose the restriction, by virtue of our legis-

lative power; others say, we derive the authority from compact; I said, that there was an incompatibility in their principles, and I will now endeavor to prove it. When we make a contract, we consult not our will only, but that of the other party also: and it is the concurrence of our wills, which can alone give being to a contract; but in legislation, our own will is the rule of our action; *voluntas stat pro ratione*—we speak to command—we command to be obeyed; were I disposed to give a very strong example of the legislative style, I would quote the imperial edict, as given to us in the book of highest authority: "Cæsar Augustus sent forth a decree, saying, all the world should be taxed." We do not, indeed, use such a lofty style of imperial dictation; nor does the extent of the civilized world, constitute the bounds of our dominion, as in the days of the second Cæsar; but our legislative power, within the lawful range of its authority, is just as unlimited, save only, that we are subject to the control, which the exercise of a sound discretion and our responsibility to our constituents, impose upon us. I repeat, then, that to attempt to maintain the legislative power, is to abandon the ground of compact; and *e converso*, to attempt to maintain the principle of compact, is to abandon the legislative power; because the one implies consent, as essential to its existence, whilst the other acts independently of all consent, in the execution of its own will. I will now, however, with the leave of the committee, proceed to examine the several provisions of the constitution, which have been relied on, in the course of the discussion, with a view to support the one, or the other, of these principles. Before I do this, however, I must make this apologetic remark to the committee, for referring to clauses, which have been so often quoted. That the advocates of the restriction, having to maintain their principles, have selected their own texts of the constitution, on which to comment; that, as my argument consists of a counter commentary to theirs, I am constrained to refer to the same texts from necessity.

The first which I shall examine, because it has been most relied on, is in these words: "New states may be admitted by the Congress into this Union." Now, say gentlemen, this provision is *permissive*, not *imperative*. That as Congress may, so they may not, admit; and as they may not admit, therefore they may, in their discretion, impose their own terms On my part, it is contended that the power of Congress is limited to the simple alternative, of admitting or not admitting; that even this power is subject to the modification, that they have not the moral right, to refuse admission to a territory, whose situation and circumstances fit it for admission.

I would illustrate my idea on this subject, by a reference to the powers, of laying taxes and borrowing money. We have the power to obtain, either by taxation or loan, millions of dollars, if the treasury were even full to overflowing; yet no man will say, that we have the moral right to do this, much less to menace a state or states, with the exercise of this power, unless it, or they, would agree to some condition, injurious to their rights. But let us return to the clause. What is to be admitted? A *state*. Although much has been already said in relation to this word, I beg leave to add something more. The definition of the word *state*, in general, need not be resorted to, because it is to be defined here, in the sense in which it is used in the constitution. There is no rule of construction so universal, as it respects laws, treaties, or constitutions, as this, that the same word repeatedly occurring in the same instrument, shall receive the same interpretation. Thus, sir, no one will deny, when both the federal and state governments are forbidden, to pass bills of attainder, or ex post facto laws, that these terms mean the same thing, in each instance. Take another example, which comes nigher to the present question: Suppose, in the very clause now under consideration, it had, from abundant caution, been added, that the new states, upon their admission, should be entitled each to two Senators and their proper proportion of Representatives; no man would have doubted, but that the Senators and Representatives, must possess precisely the qualifications prescribed, in a previous part of the constitution, to wit, a certain age, residence, and citizenship; and so, sir, of any other term in the whole instrument. Construe the word state, then, like all the other words in the constitution, in the sense in which it is previously and repeatedly used, and there would at once, be an end of the question. For, when a new state is to be admitted, it is just such a state, as is produced by the various provisions, of the constitution.

But, again, sir, *new* states are to be admitted. Now this word *new* is clearly put in contradistinction to *old*, and this contradistinction, is what constitutes and defines the difference, and the only difference, which was intended to be expressed; as naturally, as when we speak of a *young* man, we put him in contradistinction to an *old* one; but with this difference only, we mean a natural being, of the same powers and faculties, such as will, judgment, memory, &c. So, sir, when we speak of *new*, in opposition to *old* states, we mean just such a political being, possessing the same political powers and faculties, distinguished only, by the circumstance of age.

This assumption, that because we have a power to re-

fuse admission, we therefore have a right to impose terms upon that admission, proceeds from the misapplication of a principle in itself perfectly true, but which has no sort of application to the present question. It is this, *that he who gives, has a right to prescribe the terms of the gift.* This is entirely true, in relation to property which belongs to ourselves, and which we have not only the power, but the moral right, to give or not, as we please; but it is entirely untrue, if it be attempted to apply it to a case like the present, when we are acting not for ourselves, but as trustees for others; not in relation to any thing which belongs to us, but in relation to the subject matter of that trust; in that case, not we, but those whose agents we are, have the right to prescribe terms, as I shall endeavor to show, has been done by the constitution. To shew the fallacy of this doctrine, that because we may give, or withhold our assent, we may therefore impose our own terms, permit me to call your attention, to some analogous provisions of the constitution. Congress has power to give its consent or not, that a state may lay duties on imports. Suppose an application made for such consent, is there a member of the committee who would contend, that Congress had a right to give it, upon condition that the state should give some equivalent? For example, that it should agree in its turn, that its exports should be taxed; no one, I am persuaded, will attempt to maintain this position. Again, sir, Congress may consent or not, that a state may keep troops in time of peace; would they have a right to attach as a condition to that consent, that the state should submit to the imposition of a direct tax, in a mode different from the ratio of representation? No, sir, it will not be pretended; and yet there would be as much plausibility in both of these hypothetical cases, as can well be conceived in any case; because the conditions stated in both, consist in surrendering rights reserved to the states for their benefit; yet Congress could not attach such conditions; the path of duty would be plainly this: if the situation of the applying states were such, that the required consent ought not to be granted, then it would be wrong to grant it for any supposed equivalent; if, on the contrary, circumstances were such as to make the application a proper one, then it ought to be granted without equivalent. I could state other cases of a similar character; these will be sufficient to shew, that it does not follow, because we have a power to refuse consent, therefore we may impose conditions on that consent, when granted.

If we were to impose this condition, we should commit a palpable violation, of that provision of the constitution, which makes it our duty to guaranty to every state

in the Union, a republican form of government. A republican government, is one derived from the people to be governed by it, liable to be altered, reformed, or abolished by themselves. Yet we, whose sworn duty it is to guaranty to the people of Missouri, a government formed by themselves, are now about to declare that in one important particular, their constitution shall not be such as they desire, shall not be alterable according to their own will, but shall, in the first instance, be such as we choose it to be, and shall not afterwards be altered without our consent. Sir, the plain meaning of the constitution is this—its provisions were intended, not only for the states, which then existed, but for such as should thereafter exist. As far as they then existed, they at once became parties to it; and no man can doubt but that the new states since formed, had they then been in being, would have been received as parties to that family compact, and consequently upon the terms therein contained; but those states, which did not then exist, could not become parties; the original states, therefore, left this constitution as a perpetual power of attorney, empowering us, as their agents, to receive new states into the Union; and the various provisions of that instrument, perpetually accompany it, as the prescribed terms of such admission. If it were otherwise, if we were at liberty to impose what conditions we please upon the new states, our government would present this monstrous anomaly, that the original states had provided a permanent constitution, as it respected themselves, alterable only by themselves, but as it respects new states, had in effect given to Congress, the power of making a constitution for them.

Sir, there is a plain process of reasoning, which, it seems to me, will put to rest all difficulty about the relation, in which new *states* stand to the *old;* and perhaps it is because it is plain that it is not observed. It will consist in propounding to the committee a series of questions, all of which, I undertake to affirm, that every member must answer in the affirmative, and yet gentlemen will find themselves reduced to the dilemma, of answering them negatively, or of giving up the proposed restriction. It might perhaps be sufficient, to put one general question only: Do the various provisions of the constitution apply to the *new*, as well as to the *old* states? But the committee will pardon me for pursuing them in detail, because by that mode I think we shall arrive at such palpable conclusions that the mind cannot withhold its assent. I will now commence the catechetical mode of argument which I have just indicated:—Are the new states entitled to a representation in this house, and, if they be, is it in proportion to their federal numbers?

Are they entitled to a representation in the Senate, and, if so, is it an equal representation? Are they entitled to electors of President and Vice President, and, if so, is the number to be in the compound ratio of their Senators and Representatives? Are they subject to the legislative powers of Congress, such as that of laying taxes, &c.? Are they entitled to the benefit of the exemptions in the constitution, such as the protection against a duty on exports? Are they subject to the various prohibitions in the 10th section of the 1st article, such as that no state shall coin money, &c.? Are they entitled to the benefit of the provision, that the citizens of each state, shall be entitled to all the privileges and immunities of citizens in the several states? Finally, do the 9th and 10th articles of the amendments extend to them, especially the 10th, which puts into the shape of a constitutional declaration, what would have been a necessary rule of construction; namely, That the powers not delegated to the United States, nor prohibited to the states, are reserved to the states respectively, or to the people? There is not, surely, a member of this committee who would venture to answer one of these questions negatively; and yet, from an affirmative answer to them all, there results an inevitable conclusion, that this restriction cannot be imposed. I have assumed that it is impossible to say nay, to any one of these questions; but, to make certainty more certain, let me exemplify in one, or two instances, corresponding to these questions. Can you give a new state three Senators, or can you pare them down to one? Can you release them from their liability, to your legislative power, by stipulating, for example, that they should not be included, in the imposition of a direct tax? These two cases, present examples, the first of a *right* acquired, the second of an *obligation* contracted, by coming into the federal Union. Let me now put a case, in relation to the prohibitions, on the exercise of state sovereignty: Can you authorize a new state, to coin money, or grant letters of marque and reprisal? If every member of the committee must agree that you cannot do, any one of these things, what, permit me to ask, is the reason? Can the mind of man, conceive any other, but this great and obvious principle, growing out of the constitution—that, coming into an association of states, bound to each other, by a mutual compact, the terms of that compact, necessarily apply to them, and consequently impart to them the same rights, and impose upon them, the same obligations which pertained to the elder members of the confederacy? If this be not the reason, I demand of gentlemen to tell me what it is; but, whatever may be the principle, it is entirely sufficient for all the purposes of my argument,

that all agree, that the several provisions of the constitution, which I have before quoted, do, in point of fact, apply to, and operate upon the *new*, as much as upon the *old* states. If this be the case, the federal rights and obligations, of the new states and their citizens, are as much fixed by the constitution, as those of the original states; the grants of municipal power made by the new states, and the reservation of the remainder to them, are as much fixed by the constitution, as are those of the original states. But what is settled by the constitution, cannot be altered by law. If the proposed amendment, then, embrace a provision, which alters the powers or rights of the new states, or their citizens, in any degree, either by enlarging or diminishing them, then it is void, as being in conflict with the constitution, which, I have just shewn, has settled those rights and powers, and which is paramount to the law.

I will now endeavor to show, beyond all question, that the effect of the proposed amendment is to diminish the rights and powers, of the citizens and state of Missouri. When this amendment shall be passed, a citizen of Missouri cannot carry into that state, slaves from any portion of the United States; a citizen of Virginia, will have the right to carry them into his state. I ask you, sir, if these two citizens be equal? And yet one of the clauses of the constitution, which I have referred to, and which, I have shewn, applies to the new states, declares, that "the citizens of each state, shall enjoy all the privileges and immunities of citizens in the several states." It is said, however, that a citizen of Pennsylvania cannot carry a slave into that state, and that therefore the citizen of Missouri, stands on an equal footing with him. I utterly deny the position. Gentlemen here reason from fact to principle. Although such is the law of Pennsylvania, it is an act of their own legislature, which they were free to enact or not, and to repeal at their will: not so with Missouri; for, in the first place, we in effect decree it for them, and then declare it to be irrepealable without our consent. Let us leave all the citizens of the United States at liberty, by their own legislation, either to retain or abolish slavery, and then they are all upon an equal footing in point of *right*, as by the constitution they are declared to be: and if they shall exercise that right in different ways, in the several states, and thus put themselves in different situations in point of *fact*, it it is an act of their own will, with which we have nothing to do.

It is said, however, in a memorial presented to us, that this principle would lead to monstrous consequences; that if there were but a single state in the Union, which

tolerated slavery, this principle would not only enable the citizens of that state, to carry slaves to a state whose laws forbade it, but would even enable citizens of the latter state to hold them, contrary to their own laws. These consequences, if they could follow, would indeed be monstrous; but I think I shall be able to shew, that the fallacy of reasoning which leads to them, is still more so. Our principle does not claim for the citizens of one state, greater privileges than citizens of the other states enjoy, but the same only Now it is obvious, that, if a citizen of Virginia could hold slaves in Pennsylvania, he would enjoy greater privileges than a citizen of that state. This obviates the first part of the objection; the second part is as easily obviated. I have already shewn you that the citizens of two states are perfectly equal in point of right, when they are left at liberty to retain or abolish slavery. If the one retain, and the other abolish it, it is the exercise of their own will, expressed by their own representatives, which produces the difference in their situations. The true principle is this: As in Virginia slavery is tolerated, a Pennsylvanian is equally with a Virginian entitled to hold a slave there; as in Pennsylvania slavery is not tolerated, the citizens of neither state can hold a slave there: but it it competent for either state to vary its legislative provisions in this respect, at its own will.

Let us now see, whether the proposed amendment does not diminish the powers of Missouri as a state. The standard by which to ascertain the powers of a state, is furnished, first, by the grant of legislative power to Congress; secondly, by the prohibitions upon the powers of the states. All other powers, not included in this grant, or in these prohibitions, remain with the states. Such is the explicit declaration of the 10th article of the amendments, already quoted. Now, sir, no man has pretended that the power is granted to the Federal government to abolish slavery, or that it is prohibited to the states to retain it. According to the positive provision of the 10th amendment, therefore, it is retained; and yet gentlemen are now about to exercise this power, as if it were granted to us. Gentlemen will at once acknowledge, that they would not attempt this in relation to the old states; and why, sir? Do you answer that all powers not delegated, nor prohibited, are reserved to them? Then say I, you yourselves admit, that the same article which makes the reservation of powers in favor of the *old* states, applies also to the *new*; and consequently it cannot be so construed as to justify, in relation to the new states, what it forbids towards the old. If, then, the prohibitions and the reservations of power equally apply to the new states;

if, as I have shewn, it is not competent for us to enlarge the powers of the states, either by surrendering any of our legislative powers, or by removing any of the prohibitions, it follows, necessarily, that we cannot *diminish* them, by breaking in upon the fund which they have reserved. The same constitution which contains the grant to us, and the prohibitions upon the states, secures to them the enjoyment of the remainder.

It has already been asked, with great force, if we can break in upon this reserved stock at all, what will hinder us from taking all? Gentlemen have felt the pressure of this argument; they have seen that, without some limitation, we should be led to the consequence that we might take all. To avoid this, they have attempted a limitation, which I will shew you, sir, is perfectly arbitrary. They have said, and such is the language of the Boston memorial, that, from the very nature of the case, we cannot take away Federal rights. It would be strange, if we could not take away what the constitution gives to the states, and yet could deprive them, of what belonged to them in their own right, independently of the constitution. The position of gentlemen would seem to lead to this inference; and yet it is impossible, that they can mean all that their principle would seem to embrace. It is impossible they can mean to say, that all rights and powers, not Federal, can be taken from the states. It is not a federal right, or power in the states, to regulate the course of descents. I have purposely selected this example, because in more than one instance in the Federalist, this very case is put, as shewing that, by no latitude of construction, could Congress interfere with it; and yet, if there be no other limitation upon us, except that we cannot touch Federal rights, we might even interfere with this subject. Indeed, sir, if another principle in the Boston memorial be correct, it would lead to the conclusion, that we might interpose in the regulation of descents: it is this: that Congress might attach, as a condition to the sale of its lands, that the owners should never own slaves. If they could do this, it would be more reasonable that they should have the power of regulating descents. The argument would stand thus: We cannot trust the people of Missouri to legislate for themselves, because, possibly, they might establish in their law of descents the principle of primogeniture; and might authorize the perpetuation of estates in the eldest male, by the doctrine of entails. If they should do this, they would create an aristocracy in the country, which would be unfriendly to the principle of republican government, which rests upon the basis of equality. But we are bound to guaranty to every state in the Union, a republican form

of government; therefore, we will interfere with their legislation in regulating the course of descents. I appeal to the committee, whether this reasoning would not be more plausible, than any which could be urged in favor of the condition, of not cultivating lands by slaves. Yet I hope no man will contend, that we could regulate the course of descents. There are rights and powers, not Federal, then, which we cannot take away. To what rule shall we resort, to ascertain which they are? I answer, in the language of the Boston memorial, that it results, from the very nature of the case, that we can deprive a state of no right, federal or municipal, which is granted, or reserved to it by the constitution. Take this rule, all is plain and intelligible; discard it, and every thing is involved in uncertainty and confusion.

An attempt has been made, however, to distinguish this subject from the general rule, arising out of the constitution, upon this ground, that slavery was a question adjusted by compromise, and that therefore no states but those which were the original parties to the constitution can claim the benefit of that compromise; I think it will be found sir, that this position is just as untenable, as the various others from which gentlemen have, I trust, been driven. There were other subjects besides slavery, adjusted by compromise; I will mention the most prominent one, that of an equal representation in the Senate. This is incontestibly proven by the circumstance, that in the clause providing for amendments, it is declared, that the constitution shall not even be so amended, as to deprive any state of its equal suffrage in the Senate, without its own consent; this is the only provision which is forever put beyond the reach of amendment, in the ordinary mode. Now, sir, this was emphatically the work of a compromise, in a vital part of the constitution; the principle of gentlemen, if true, would lead to the conclusion, that the new states were not entitled to the benefit of this provision, because they were not parties to the compromise; yet no gentleman will maintain this position; and if he will not, he must give up the other upon the subject of slavery. Gentlemen complain of what they consider injustice, in the southern representation being increased by their slaves; if they could even shew this, yet they could not, in this way, attempt to alter it. But, upon their own grounds, I am prepared to shew, that the hardship is on our side; for this purpose I beg leave to introduce to your attention Virginia, and Indiana; the whole representation of Virginia in this House is twenty-three, of which number she is entitled to sixteen, from her free population, and to seven, from her slaves; Indiana in this House, is entitled to one mem-

ber; Virginia then has a right to sixteen times as many members here as Indiana, even from her free population; but in the Senate, Indiana, by a provision of the constitution, irrevocable without her own consent, is equal to Virginia. It thus appears that whilst in one House, Virginia, by her slaves, receives an increase of less than one half her representation; Indiana, in the other, has her relative weight multiplied fifteen times, and that too as I have shewn, by an irrepealable provision of the constitution, without her own consent; Whilst Virginia is liable by an amendment of the constitution, even against her consent to be deprived of that part of her representation which she derives from her slaves. I will say nothing about our being taxed on account of our slaves, in the same proportion, in which they increase our representation, as that has been already presented to you.

But, say gentlemen, the powers which the constitution does not give us, we can get from the several states by compact. They say that both the United States, and the state of Missouri, are competent, to make a contract; and that if the one party make a proposition, and the other accept it, this is obligatory on them both. Even if this principle were true, an abundant answer is furnished by an argument which I believe has been already urged, and which I shall therefore only state, without pursuing it; it is, that by the treaty, which was a compact prior in point of time, and paramount in point of obligation, the people of Missouri have acquired certain rights; that therefore it is not competent for you, merely because you are the stronger to say, that you will not comply with its stipulations, unless they will agree to another compact, the effect of which will be, to deprive them of one of the rights, which I shall attempt hereafter to shew, when I come to speak of the treaty more at large, it gave them.

But let us examine the gentlemen's proposition, as to the competency of the United States, and the states, to make compacts. It is true only in a very qualified sense, as I will now attempt to shew you. The constitution authorises Congress to procure by cession a seat of government, and by purchase, scites for forts, arsenals &c. from the several states; it authorises the states, by consent of Congress, to make compacts with each other, and with foreign powers; probably the power to admit new states, connected with the prohibition to form them out of the territory of others, without the consent of Congress and the states concerned, will justify the cession of territory by the states, for the sole purpose, however, of forming Republican states. Now, sir, quo ad the particular subjects which I have mentioned, the constitution imparts to

the United States, and to the states, as the case may be, a competency to contract ; if gentlemen mean to extend that competency one iota beyond these subjects, then I utterly deny their principle. We have been referred to many compacts, which have been made by Congress and the several states; without yielding to the force of precedents, if not justified by the constitution, but protesting against them, I think I can venture to say that most if not all the compacts referred to, will be found to be of the description which I have mentioned, But we have been referred to some of the stipulations of those compacts, particularly between Virginia and Kentucky, and have been asked, whence was the power derived to make them ? It has already been shewn, that the constitution gives them the power, with the assent of Congress, to make compacts, subject of course to the limitation, that they do not violate that instrument. As to the stipulations themselves, it will be found, that almost all of them, are mere declarations of what would otherwise have existed, by virtue of the constitution; for example, Kentucky shall bear her equal part of the public debt; the navigation of the Ohio shall be common between the citizens of the two states ; non-residents' lands, being citizens of Virginia, shall not be taxed higher than residents ; the first provision is the inevitable consequence of Kentucky becoming a member of the Union, whereupon she was liable to her proportion of taxation ; the second and third are both emphatically embraced by the provision, that the citizens of each state, shall enjoy all the privileges and immunities of citizens of the several states. The same remarks apply to almost all the stipulations, in the compacts between Congress and the states ; if an exception can be found, I have only to say that we cannot justify one violation of the constitution by another. The question here, however, is of an entirely different kind ; it is not a question about the cession of territory, between Congress and a state, nor about a compact between two states, containing provisions to secure a community of rights and privileges between their citizens, which the constitution itself secured ; but it is, whether Congress can by a compact with a state, obtain from that state a surrender of any portion of its sovereignty ? Let us put a case, and one in relation to an old state, for I think I may now assume, that the old and new stand on the same ground. Would Virginia, then, be bound by a contract made with Congress, by which she should stipulate to establish a particular course of descents, or a particular code of criminal jurisprudence ? No sir, the Member from Pennsylvania (Mr. Sergeant) after quoting so many compacts, which did not apply, acknowledged that if the

one now proposed, would in any degree impair the Sovereignty of Missouri, it could not be sustained. Now, sir, it seems to me, that it is only necessary to define what sovereignty is, with the aid of this concession, to shew that the amendment must be abandoned. A state, to be sovereign and independent, must govern itself by its own authority and laws, without the interference of any foreign power.

I ask, then, if this amendment prevail, will Missouri govern herself by her own authority and laws, in relation to the subject of slavery? On the contrary, do we not by the amendment say to her, that she shall in the first instance submit to our will, contrary to her own, and that not by an act of ordinary legislation, but by one, which we require to be made irrevocable without our consent? If it be said, that ours is not a foreign interference, I answer in the language which I have formerly used, that, as to any subject over which, a power is not given to the general government, and I trust I have proven this is one of that kind; that government is a foreign one to the states, as much as any government in Europe. But it is asked whether it is essential to sovereignty, that a state should have slavery in its bosom? I answer no sir; but it is of the very essence of sovereignty, that a state should have the power of deciding for itself, whether it will, or will not, tolerate slavery. Gentlemen pressed by this reasoning, retreat to another ground; they say that slavery is a moral wrong, and as such cannot be the subject of sovereignty; I answer that it is essential to sovereignty, and the highest act of its exercise, to decide what is embraced within its limits, and that the very act of one government, attempting to decide this question for another, is a glaring violation of the sovereignty of that other; I answer further that sovereignty in relation to the internal concerns of a state, has no limits but the discretion and moral sense of the state itself, unless it relate to a subject, the power over which has been specially delegated, and it has been the purpose of my whole argument to prove, that this has not been so delegated. Suppose that a state, like ancient Sparta, should by its laws even sanction the barbarous practice of putting their Helotes to death; suppose that it was so lost to the moral sense, as to permit the most enormous crimes against the laws of morality, or religion, to escape with impunity. Have we the power to interfere in these matters of municipal legislation, unless it be in relation to a subject over which the constitution gives us power? I must be pardoned for repeating, that we have no more than one of the governments of Europe.

But in whatever light we look upon the subject of sla-

very, whether as a moral wrong or not, whether as a rightful subject matter of sovereign power, or not, we know that it existed in many of the old states, at the formation of the constitution; that it has continued to exist; that there are several clauses in the constitution, which have direct reference to it, giving protection to the master in reclaiming the services of his slave, and conferring political power, and creating a liability to taxation, with an acknowledged view, to this kind of population; this is admitted by all to be the case, as it respects the *old* states; I have shewn again, and again, that the new states and their citizens have all the rights, privileges, immunities, and powers of the old states. If then it be a right, or if you please a wrong, in the old states, and their citizens, to hold slaves beyond our control, then the new states and their citizens claim the same right, or the same wrong, call it by what name you please.

It has been said by the two gentlemen from Pennsylvania, (Mr. Hemphill and Mr. Sergeant,) that the states had the right to admit new states upon conditions to be prescribed by themselves; and it has been asked, what has become of that power? If they have given to Congress the simple power of admission, is the other part of the power annihilated, or does it yet remain with the states? To these questions I answer, without difficulty, that the states did possess the power of admitting upon condition; that this part of their power is neither annihilated, nor does it remain with them; that they have given to Congress the power to admit; and that they have declared the terms and conditions of that admission, in the various provisions of the constitution.

Sir, the conclusion of the whole matter is this: The states which were the original parties to the constitution, have given to Congress, the power of extending indefinitely the territory, over which their dominion is to be exercised, by the admission of new states; but they have not given to Congress, the right to increase their capital stock of power, either by taking, by their own will, or by the joint will of themselves, and any state or states, any attribute of their sovereignty; the first would be an injury to the individual state, from which it was taken, the second would be an injury to all the states, which compose the confederacy. No, sir, the sum of the power of Congress is fixed by the terms of the constitution, in a manner irrevocable, except in the mode prescribed for amendment; the states have not entrusted to any body of men on earth, a power which might enable them to disturb the political balance, which is adjusted with so much care in the constitution; they have not left it to Congress, to make the new states either greater or

smaller than themselves, but have made their own political dimensions, as marked out in the constitution, the precise standard for the formation of those states, which should come into their family by adoption.

I come now to speak of the influence of the treaty of 1803 upon this question. The third article provides, "that the inhabitants of the ceded territory shall be incorporated in the Union of the United States, and admitted as soon as possible, according to the principles of the federal constitution, to the enjoyment of all the rights, advantages, and immunities, of citizens of the United States; and, in the mean time, they shall be maintained and protected in the free enjoyment of their liberty, property, and the religion which they profess." An attempt has been made to assail the validity of this article, upon the ground, that it was an interference, on the part of the treaty-making department of our government, with the power of Congress, to whom authority is given by the constitution to admit new states. A little examination of this objection will shew, that it cannot be sustained: the treaty-making power, in the exercise of their constitutional functions, contracted to purchase of a foreign state the territory, the rights of a part of which are now in question. They stipulated, in the article which has just been quoted, that they should be incorporated in the Union, and admitted, as soon as possible, to a participation in all the rights, advantages, and immunities, of citizens of the United States. Here, then, is a contract, by the power in our government competent to make it, for the acquisition of people and territory, upon conditions, not in violation of our constitution, but in direct accordance with it. It is true, sir, that, according to the distribution of power amongst the respective departments of our government, the stipulations in favor of the ceded country, are to be actually performed by Congress; in like manner, the money to be paid, as the consideration of the cession, must be appropriated by Congress; yet between us and foreign powers, there is no organ by which a contract can be made, whatever may be the subject matter of it, but that department, which is authorized to make treaties. If the treaty, when made, relate to a subject which, by the constitution, falls within the jurisdiction of Congress, it results, from the nature of our government and the distribution of its powers, that Congress cannot, without their own assent, by the mere operation of the treaty, be bound to execute its provisions. But when that assent is given, more especially when, as in this case it is shewn, by the acceptance and actual disposition of the subject matter acquired, then a refusal to comply with the conditions of the ac-

quisition would be in violation, not only of the moral duty imposed by the constitution, but also of the plighted faith of the nation. What are the facts in the present case? Congress have taken possession of the territory purchased; they have paid almost the whole consideration; they have derived large sums of money from the actual sale of the land, and, by repeated acts of legislation, have in various ways exercised authority over the people and soil. We are, then, as much bound by our own assent, in this case, as a private man, whose agent has purchased an estate for him, subject to mortgage, would be to discharge that mortgage, if, with a knowledge of the incumbrance, he took possession of the estate, and, either by cultivation or sale, received the benefit of the purchase.

Assuming it, then, to be proven, that we are under the double obligation, first, of moral duty, and, secondly, of plighted faith, to admit Missouri into the Union, and to extend to her citizens all the rights, advantages, and immunities, of citizens of the United States, the next question which presents itself is this—What are those rights, advantages, and immunities? And here, sir, I beg leave to refer to the various provisions of the constitution, which I have already examined, as shewing what they are; claiming for the state and citizens of Missouri the same powers and rights precisely, as by the constitution are recognized as belonging to the original states, either by grant, or reservation, and, amongst others, the power in the state by its own will, to regulate its own internal concerns, and to decide for itself, whether it will tolerate slavery; and, if it should so will, the right in its citizens to the slaves which they now hold, to their future progeny, and to acquire and carry into that state other slaves from any portion of the United States.

The gentleman from Pennsylvania (Mr. Sergeant) objected, that the terms of the treaty embraced only the inhabitants residing there at its date. What then, sir, is the condition of the children of those inhabitants, and what has it been for the 17 years which have elapsed since that period? Will the gentleman say, that the provisions of the treaty do not extend to them? As well might it be said, that those who are born in a country after the formation of its constitution, are not entitled to share in its benefits. What, too, sir, let me ask, is the condition of citizens of the United States, who have removed to that country, having purchased lands from us? They are entitled to claim the benefit, in my opinion, of the treaty and constitution both; but, beyond all doubt, the moment the state of Missouri is admitted into the Union, the constitution, by the provision which I have so

often quoted, secures to them an equality, a community of privileges and immunities, with their fellow citizens throughout the United States; and gives to the state, as such, equal rights and powers with the other states of the Union, the extent of which I have already shewn.

The next clause from which the right to impose this restriction is derived, is that which gives us power to make all needful rules and regulations, respecting the territory of the United States. I do not propose to go into the general question, how far our power extends over the territories, as such : that question will hereafter be distinctly presented to our consideration. Deferring, therefore, the general enquiry till that occasion, I beg leave to remind the committee that, as it respects the now territory of Missouri, we have, by one of our own regulations, given it a legislative body; that we have extended to that body the whole power of legislation, subject only to the limitation that their laws shall not be inconsistent with the constitution and laws of the United States; a limitation to which every state in the Union is equally subject; the question of slavery is one of a legislative character : it, therefore, already belongs to them to decide it by our own grant. Let me ask gentlemen, can a grant of political power be revoked at the will of those who grant it ? Would it not excite some surprize in this hall, to talk of revoking a common charter of incorporation, such as that of the Bank of the United States, unless for some cause of forfeiture of that charter ? I do not mean now to say, what the extent of legislative power is, in relation to that subject; some modern writers of merit seem to countenance the idea, that there are strong cases, in which it would be a legitimate exercise of power : but of this I am sure—that this house would not undertake to revoke the most common charter which they had granted, unless for some act of forfeiture ; and yet it seems to be thought by many an act quite of ordinary legislation, to revoke the most exalted charter which can be created—that of the grant of legislative power. If you can take from a territory a power of this kind, when once granted, what would hinder you from repealing the very act, by which you would admit the same territory into the Union ? They are both grants of political power, differing only in degree. But, sir, let this question be as it may concerning the territories, all further enquiry into which I shall defer till that subject comes up, it has no application to the present case, which is the admission of a state. Whatever is our power over the territories, it is acknowledged that it co-exists with the territorial condition, and that when that ceases the power over them, as such, ceases also. It is acknowledg-

edged, that we could not impose this condition after the state is admitted; and yet it is contended, that it may be done just before its admission, by virtue of a territorial power, which must necessarily cease to exist, at the moment when the admission takes place : in a word, it is argued that, by virtue of a power confessedly temporary, we can impose a condition, in its character perpetual, if we so will. I cannot shew the glaring impropriety of this position in so palpable a mode, as by likening it to a case of municipal law. Let us put the case of guardian and ward. A guardian has power to make leases of his ward's land, during his minority, and to expire with it; the moment after his ward reaches majority, he has no power over the estate ; and yet, sir, upon the principle now contended for, he might enter into a contract the day before the minority ceased, which would bind the ward and his heirs forever. If such a proposition as this, were stated in the judicial hall, in another part of this Capitol, the gentleman would be told, that it could not even be received for discussion.

The next clause in the constitution, from which the power to impose this restriction is attempted to be derived, is that by which it is declared that " The migration or importation of such persons as any of the states now existing shall think proper to admit, shall not be prohibited prior to the year 1808." Under this it is contended, that slaves may be prevented from passing from one state to another. It has already been properly said, that if that were the correct construction, it ought, being a legislative power, to be executed by an act of Congress, having equal effect upon all the states, and not by an irrevocable compact, operating on one only. But, sir, independently of this objection, there are two other answers to the argument attempted to be derived from this clause, which I consider conclusive. The first is, that the word migration applies to *freemen*, not *slaves*. The origin and received acceptation of the term prove this. I think I can shew it, too, by reference to the probable object of the clause, and the conflicting interests of different sections of the country which it attempted to reconcile.

Let it be recollected, that the constitution entitled the slave holding states to a representation founded, in a certain proportion, upon their slave population. Now, sir, I think it fair to conclude, as it was agreed that Congress should not have the power to prohibit the importation of slaves prior to 1808, by which importation the representation of the slave holding states would be increased, that the jealousy of the non slave holding states required as an offset to this, that the migration of free persons, by

which their representation would be increased, should not be prohibited till the same period. But, sir, there is an answer, arising from the phraseology of the clause, which seems to me to put an end to the question ; the words are : "The migration or importation of such persons as any of the states now existing shall think proper to admit, shall not be prohibited." Now this word "*admit*," proves incontestably that the word migration, whether it relates to free persons or slaves, looks to persons coming from abroad ; for, if they were already in the states, they could not be admitted. Sir, it would be a solecism in language, to talk of admitting a man into a house, who was already in it.

The last source from which gentlemen have sought the power of imposing this restriction, is the clause which authorises Congress "to regulate commerce amongst the several states." Sir, you have already been properly told, that this clause meant only to enable Congress, by uniform and equal regulations, to prevent one state from imposing injurious duties upon the commerce of others, passing through its jurisdiction. This is proven, first, by the exposition given of that power by the Federalist, where the principle just mentioned is stated as the reason which led to its adoption. I will add, that a striking exemplification of the principle will be found in the relative situation of the states of New York, Connecticut, and New Jersey ; it is proven, also, by those provisions of the constitution which forbid Congress from giving, by any regulation of commerce, a preference to the ports of one state, over those of another, and declaring, that vessels bound to or from one state, shall not be obliged to enter, clear, or pay duties in another.

You have been properly told, also, in relation to this clause, as to that concerning migration, that if it touch the case at all, it is a legislative power, and must, in its operation, affect all the states alike. To shew to the committee the glaring impropriety of this amendment, as resting for its support upon this clause, permit me for a moment to present to you the shape of a bill, having an appropriate title, and followed by the enactments which gentlemen propose. As I have shewn to you, that the new states have all the rights of the old, indulge me so far as to substitute Maryland for Missouri. The appropriate title, then, as derived from the language of the constitution, would be, "An act to regulate commerce in slaves amongst the several states" Now, sir, for the enactment, just such in substance as gentlemen propose : "Be it enacted by the Senate, &c. that hereafter no slave shall migrate from any part of the United States, into

Maryland; that the children who shall be hereafter born, of all the slaves now in that state, shall be free; and that Maryland shall provide for this, by an act, irrevocable without the consent of Congress." Such a bill would indeed be like the painting of Horace, with a human head, but in another part, resembling the fish. I should like to see such an act, with such a title, published in the Intelligencer. *Risum teneatis amici?* Would not Maryland naturally enquire, why single this state out, and put it under your prohibition? Sir, if you mean to regulate commerce, then it must be amongst the several states; but according to this law, a slave may migrate to Virginia, but he cannot migrate to Maryland; it is liable, then, to the strong objection, that it is unequal and partial in its operation. But, sir, Maryland would press you with other objections of an unanswerable kind; she would tell you, that commerce *ex vi termini*, implies buying and selling, an exchange of equivalents; but your law will embrace many cases, where there is no buying and selling; no exchange of equivalents, and consequently, no commerce to regulate. She would instance the case of slaves being derived to a citizen of Maryland, by intestacy, by devise, or by marriage. She would state the case of a citizen of another state, removing to Maryland, and carrying his own slaves with him; in not one of these cases is there the slightest pretence of commerce, and yet your law would embrace them all. She would tell you, too, that if she were to pass any act at all, she must consult her own will, her own views of expediency; and that what she enacted, she claimed the power to repeal, without consulting Congress.

But, sir, the strongest objection lies yet behind. The law which I have supposed, upon the model of this amendment, emancipates the children of all the slaves now in Maryland. Is this too, a regulation of commerce? It is a contradiction in terms, to give it such a name. This last part of the bill, sir, is the most alarming in its consequences, for it goes directly to the emancipation of slavery throughout the whole United States, after the present generation shall become extinct; that is, in the life of one man—for, whilst the candles are all burning, tho' millions may be embraced, yet the life of the longest liver terminates the period. And have you the power to emancipate the children of acknowledged slaves? Yes, says one gentleman from Pennsylvania, (Mr. Hemphill;) for he asked, can a man have a vested interest in an unborn human being? and he answered, *no*. If this be the doctrine, sir, though that gentleman did not apply it, and I believe did not intend to apply it, to the old states, I

repeat again, that it proclaims universal emancipation, after failure of the present generation of slaves. Sir, it is of no importance, that the present Congress do not apply it: we are but actors, who fret our busy hour upon the stage, and then pass away; others will come to act their parts, and these principles may then be put into practical execution, in their utmost extent. I will not detain the committee to prove, that a property in the parent implies property in the progeny. The maxim "*Partus sequitur ventrem*" is as old as the civil law; it is founded upon the immutable principle, that wherever I have property in the capital stock, I have the same property in its products. He who owns the land, owns all the fruit which it produces. If, then, you admit my property in the parent, you cannot deny it in the child. If, indeed, you deny my right to a vested interest in an unborn human being, you may perhaps go one step further, and deny the same interest in those who now exist. The argument is as strong in one case as the other. Assume but this principle, and then you need not wait for futurity, to do this great work of emancipation. No, sir, you may say at once to every bondman in the United States, you are free.

I have now sir, finished my view of this question. I believe upon my conscience, that the proposed restriction, is a violation of the constitution; I trust I have proven it; if I have, or if there be even serious doubt, I conjure the committee to pause, before they take the step proposed; sir, it was long a desideratum in politics, to devise a government like ours, which should, by the union of many sovereign states, each retaining its sovereignty for municipal purposes, combine the strength of a monarchy, with the freedom of republic. With us, it is "in the full tide of successful experiment." Let us not take any course calculated to arrest its success; such I fear will be the unhappy tendency, of the present measure. Let it not be supposed that I come here, the apostle of disunionn; no sir, I look upon the Union of those states, as the ark of our political safety; if that be lost, we may bid farewell, a long farewell, to all our pleasing hopes and fond anticipations of future greatness, and glory. They will be as the illusions of a deceitful dream. But, whilst I deprecate dis union as the most tremendous evil, I cannot shut my eyes, against the light of experience; I cannot turn a deaf ear, to the warning voice of history; from these we learn, that *Harmony*, is the spirit which can alone animate and sustain a confederate republic Whilst this spirit exists, it is displayed in acts of legislation, reciprocally beneficent to every member of the confederacy, and these become new ligaments, to bind them to-

gether in the bonds of brotherhood; this spirit is not all at once extinguished, nor are the bonds of union, suddenly burst asunder: but when instead of this beneficent spirit of legislation, which I have described, a different course prevails, this spirit of Harmony gives way successively to jealousy, distrust, and, finally, discord; let but this last, spring up amongst us, you may consider the days of the republic as numbered, and that it is fast hastening to its dissolution.

When that sad catastrophe shall befal us, this noble confederacy, which, in its undivided state, could stand against a world in arms, will be broken, if not into its constituent parts, into some minor confederacies, the victims of foreign intrigue and of their own border hatred. Where then will be your commerce, which covers every sea? where your army and navy, the means of your defence, the instruments of your glory? They will be remembered only, to make the contrast with your then situation more painful. What will become, then, of this boundless tract of western land, the subject of the present contest, which has poured, and would continue to pour, such rich streams of wealth into your treasury? It may become the theatre on which the title to itself may be decided, not by congressional debate, not by construction of treaties or constitutions, but by that force which always begins where constitutions end. I conjure you then, beware, lest, by this measure, you excite the discontent of one half of the Union, by legislating injuriously to them, upon a subject in which they have so deep a stake of interest, and you have none, in point of property; take care that you do not awaken the painful reflection, that the federal arm is strong only to destroy. I hope and trust that the wisdom of our councils may be such, as to avert these evils; but he knows little of the human character, who does not fear that consequences like these may follow, if the hand from which the greatest good is looked for, be the one which deals out the deepest injury.

God grant that, in deciding this question, we may bear in mind this excellent motto, "united we stand, divided we fall."